

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TREVOR ROBINSON,

Plaintiffs,

CIVIL ACTION NO.: 08 cv 6667

-against-

AL SWEET TRUCKING, LLC and RONALD  
HERBERT,

**VERIFIED ANSWER WITH  
COUNTERCLAIM**

Defendants.  
-----X

TO: JAMES NEWMAN, ESQ.  
2815 Waterbury Ave.  
Bronx, New York 10461  
718.823.3122

The defendants, AL SWEET TRUCKING, LLC and RONALD HEBERT (incorrectly sued herein as Ronald Herbert), by their attorneys, LAW OFFICES OF LORNE M. REITER, LLC, by way of Verified Answer with Counterclaim to the plaintiff's Verified Complaint, upon information and belief say:

**AS AND FOR THE FIRST CAUSE OF ACTION**

1. The defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Verified Complaint.
2. The defendants deny the allegations contained in paragraphs "1", "4", "6", "7", "8", "9" and "10" of the Verified Complaint.

**AS AND FOR THE SECOND CAUSE OF ACTION**

3. The defendants repeat and reallege their answers to each and every allegation as set forth in paragraphs "1" through "10" of the Verified Complaint.
4. The defendants deny the allegations contained in paragraph "12" of the Verified Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

5. That the damages and/or injuries that the plaintiff alleges to have sustained were caused in whole or in part by the culpable conduct of the plaintiff, without any negligence on the part of the answering defendants, and the answering defendants demand dismissal of or reduction in any recovery that may be had by the plaintiff in the proportion which the culpable conduct, attributable to the plaintiff,

bears to the entire measure of responsibility for the occurrence.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

6. Upon information and belief, any past or future expenses incurred or to be incurred by the plaintiffs for medical, dental or custodial care, rehabilitative services, loss of income or other economic loss, have been or will, with reasonable certainty, be replaced or indemnified, in whole or in part, by a collateral source as defined in Section 4545 of the New York Civil Practice Law and Rules.

7. If any damages are recoverable against said defendants, the amount of such damages shall be diminished by the amount of the funds that the plaintiff has or shall receive from such collateral sources.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

8. That the plaintiff failed to make use of available safety equipment at the time of the alleged accident and the defendants are entitled to diminution of any recovery by the plaintiff in proportion to the injury or damage caused as a result of such failure.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

9. That the plaintiff assumed certain risks inherent and/or known to him at the time of the accident and recovery should be diminished in the proportion that this conduct bears to the entire loss.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

10. Plaintiff failed to mitigate his damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

11. The Verified Complaint fails to state a cause of action for which relief may be granted.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

12. Pursuant to CPLR 1603, the answering defendants assert that the limitations contained in CPLR 1601 and 1602 and all rights contained therein apply, and defendants' liability therefore, if any, shall be limited to the equitable share of the total liability.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

13. That the damages and/or injuries sustained by the plaintiff are not serious as defined in Section 5104 of the Insurance Law of the State of New York. As such, the plaintiff's causes of action are barred and should be dismissed.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

14. Plaintiff's claims are barred by the equitable doctrines of laches and estoppel.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE**

15. The plaintiff's claims are barred, or at the very least, plaintiff's damages must be reduced by virtue of the doctrine of avoidable consequences.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

16. Damages, if any, sustained by the plaintiff was the result of actions of third parties over whom these answering defendants exercised no control.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

17. Damages, if any, were the result of the sole negligence of the plaintiff.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

18. The court lacks personal jurisdiction over the defendants due to lack of service in accordance with the Civil Practice Laws and Rules of the State of New York.

**AS AND FOR A COUNTERCLAIM BY DEFENDANT  
AL SWEET TRUCKING, LLC AGAINST THE PLAINTIFF**

1. That on or about May 6, 2008, at or near I-678, Whitestone Bridge northbound, County of Queens, State of New York, defendant Al Sweet Trucking, LLC sustained damage to their motor vehicle bearing New Hampshire license plate number ME-2, in the sum of \$9,817.53 as a result of the negligent ownership, operation, maintenance and control of the plaintiff's motor vehicle bearing New York license plate number T491934C.

2. That subsequent to May 6, 2008, as a result of an accident that occurred at or near I-678, Whitestone Bridge northbound, County of Queens, State of New York, defendant Al Sweet Trucking, LLC was forced to rent a replacement motor vehicle costing them \$2,904.51 as a result of the negligent ownership, operation, maintenance and control of the plaintiff's motor vehicle bearing New York license plate number T491934C.

3. That as a result, the defendants seek judgment against the plaintiff in the sum of \$12,722.04.

**WHEREFORE**, the answering defendants, AL SWEET TRUCKING, LLC and RONALD HEBERT, demand judgment dismissing the plaintiff's Verified Complaint and demand judgment on the Counterclaim in the sum of \$12,722.04 with interest from May 6, 2008, together with the costs and disbursements incurred herein.

**JURY DEMAND**

Defendants hereby demand a trial by jury of all justiciable issues herein.

Dated: New York, New York  
July 22, 2008

LAW OFFICES OF LORNE M. REITER, LLC  
Attorneys for Defendants  
AL SWEET TRUCKING, LLC and RONALD HEBERT  
14 Wall Street, 20<sup>th</sup> Floor  
New York, New York 10005  
(212) 222-0955  
Our File Number: 001-0116-TRY

BY:



\_\_\_\_\_  
LORNE M. REITER (LR6464)

STATE OF NEW YORK        }  
                                      } ss:  
COUNTY OF NEW YORK    }

LORNE M. REITER, ESQ., being duly sworn, affirms and says that:

He is an attorney duly admitted to practice law in the State of New York and is a member of the firm the LAW OFFICES OF LORNE M. REITER, LLC in the within action; that he has read the foregoing Verified Answer with counterclaim and knows the contents thereof, that the same is true to the best of his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

The reason this verification is not made by the defendants is that the defendants reside and are located outside the county where the undersigned maintains his office.

The source of affirmant's information and the grounds for his belief, as to those matters stated upon information and belief, are statements furnished to deponent by defendants, personal investigation of this matter and from records maintained in affirmant's office file.

I affirm the foregoing statements to be true under the penalties of perjury.

Dated: New York, New York  
July 22, 2008



\_\_\_\_\_  
LORNE M. REITER, ESQ.

**ATTORNEY'S CERTIFICATION OF SERVICE**

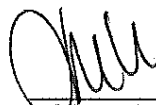
LORNE M. REITER, ESQ., an attorney duly admitted to practice before this Honorable Court affirms the truth of the following statements under penalty of perjury:

1. I am not a party to this action; I am over 18 years of age and I reside in Rumson, New Jersey.

2. On July 22, 2008, I served the within **VERIFIED ANSWER WITH COUNTERCLAIM** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to each of the following persons at the last known address set forth after each name:

TO: JAMES NEWMAN, ESQ.  
Attorneys for Plaintiff  
2815 Waterbury Avenue  
Bronx, New York 10461  
718.823.3122

Dated: New York, New York  
July 22, 2008



LORNE M. REITER, ESQ. (LR6464)